

Internal Revenue Service

Number: **200742009**

Release Date: 10/19/2007

Index Number: 9100.29-00, 337.16-00

Department of the Treasury
Washington, DC 20224

Third Party Communication: None
Date of Communication: Not Applicable

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PLR-120905-07

Date:

July 09, 2007

LEGEND

Parent =

Sub1 =

Year1 =

Year2 =

Date1 =

Parent Official =

Tax Professional =

Dear :

This letter responds to a letter dated May 2, 2007, submitted on behalf of Parent, requesting an extension of time under §§ 301.9100-1 through 301.9100-3 of the Procedure and Administration Regulations to file an election. The extension is being requested in order to allow Parent to file a “§ 1.337(d)-2(c) statement” under

§ 1.337(d)-2(c) of the Income Tax Regulations (the “Election”) to recognize some or all of a loss upon the disposition of stock of a subsidiary. The Election was required to be filed with Parent’s consolidated Federal income tax return for Year1. The material information is summarized below.

Parent, as of Date1, was the common parent of a consolidated group which filed consolidated Federal income tax returns. In Year2, Parent acquired the corporate predecessor of Sub1. From the time of its acquisition in Year2 up until Date1, Sub1 (or a predecessor) was a member of the Parent consolidated group. During this period, up until Date1, Parent’s consolidated Federal income tax returns included Sub1 which was owned 100%, directly or indirectly, by Parent. On Date1, Parent sold all of its Sub1 stock at a loss.

An election under § 1.337(d)-2(c) to recognize some or all of a loss upon the disposition of the stock of a subsidiary (Sub1) was required to be filed with or as part of Parent’s consolidated group’s income tax return for the year of the disposition. However, for various reasons, the Election was not filed. Subsequently, this request was submitted, under § 301.9100-3, for an extension of time to file a valid Election. The period of limitations on assessment under § 6501(a) of the Internal Revenue Code has not expired for the Parent’s consolidated group’s taxable year for which the Election should have been filed or for any year that would be affected by the Election had it been timely filed.

Section 1.337(d)-2(a)(1) provides that no deduction is allowed for any loss recognized by a member of a consolidated group with respect to the disposition of stock of a subsidiary.

Section 1.337(d)-2(a)(2)(ii) provides that a disposition means any event in which gain or loss is recognized in whole or in part.

Section 1.337(d)-(2)(c)(1) provides that § 1.337(d)-2(c) applies with respect to stock of a subsidiary only if a separate statement entitled “§ 1.337(d)-2(c) statement” is included with the return in accordance with § 1.337(d)-2(c)(3).

Section 1.337(d)-(2)(c)(2) provides that loss is not disallowed under § 1.337(d)-(2)(a)(1) to the extent the taxpayer establishes that the loss is not attributable to the recognition of built-in gain on the disposition of an asset (including stock and securities).

Section 1.337(d)-2(c)(3) provides that the statement required under § 1.337(d)-2(c)(1) must be included with or as part of the taxpayer’s return for the year of the disposition.

In general, § 1.337(d)-2 applies with respect to dispositions and deconsolidations on or after March 3, 2005.

Under § 301.9100-1(c), the Commissioner has discretion to grant a reasonable extension of time to make a regulatory election or a statutory election (but no more than six months except in the case of a taxpayer who is abroad), under all subtitles of the Internal Revenue Code except subtitles E, G, H, and I.

Sections 301.9100-1 through 301.9100-3 provide the standards the Commissioner will use to determine whether to grant an extension of time to make a regulatory election. Section 301.9100-1(a). Section 301.9100-2 provides automatic extensions of time for making certain elections. Requests for relief under § 301.9100-3 will be granted when the taxpayer provides evidence to establish that the taxpayer acted reasonably and in good faith, and that granting relief will not prejudice the interests of the Government. Section 301.9100-3(a).

In this case, the time for filing the Election is fixed by the regulations (*i.e.*, § 1.337(d)-2(c)(3)). Therefore, the Commissioner has discretionary authority under § 301.9100-3 to grant an extension of time for Parent to file the Election, provided Parent shows that it acted reasonably and in good faith, the requirements of §§ 301.9100-1 and 301.9100-3 are satisfied, and granting relief will not prejudice the interests of the Government.

Information, affidavits, and representations submitted by Parent, Parent Official, and Tax Professional explain the circumstances that resulted in the failure to timely file the Election. The information establishes that Parent reasonably relied on a qualified tax professional who failed to make, or advise Parent to make, the Election, that the request for relief was filed before the failure to make the Election was discovered by the Internal Revenue Service (the "Service") and that the interests of the Government will not be prejudiced if relief is granted. See § 301.9100-3(b)(1)(i) and (v).

Based on the facts and information submitted, including the representations made, we conclude that Parent has shown that it acted reasonably and in good faith, that the requirements of §§ 301.9100-1 and 301.9100-3 are satisfied, and that granting relief will not prejudice the interests of the Government. Accordingly, an extension of time is granted under § 301.9100-3, until 45 days from the date on this letter, for Parent to file the Election.

The above extension of time is conditioned on Parent's consolidated group's tax liability (if any) being not lower, in the aggregate, for all years to which the Election applies and all subsequent years, than it would have been if the Election had been timely made (taking into account the time value of money). No opinion is expressed as to the taxpayers' tax liability for the years involved. A determination thereof will be made by the Director's office upon audit of the Federal income tax returns involved.

Further, no opinion is expressed as to the Federal income tax effect, if any, if it is determined that the taxpayers' tax liability is lower. Section 301.9100-3(c).

We express no opinion as to whether, in fact, Parent qualifies substantively to make the Election. Specifically, no opinion is expressed as to whether Parent incurred a loss on its disposition of its stock in Sub1. In addition, we express no opinion as to the tax effects or any other tax consequences of filing the Election late under the provisions of any other section of the Code and regulations, or as to the tax treatment of any conditions existing at the time of, or effects resulting from, filing the Election late that are not specifically set forth in the above ruling. For purposes of granting relief under § 301.9100-3, we relied on certain statements and representations made by Parent, Parent Official, and Tax Professional. However, the appropriate Service office should verify all essential facts. In addition, notwithstanding that an extension is granted under § 301.9100-3 to file the Election, penalties and interest that would otherwise be applicable, if any, continue to apply.

PROCEDURAL STATEMENTS

This ruling letter is directed only to the taxpayer(s) who requested it. Section 6110(k)(3) of the Code provides that it may not be used or cited as precedent.

It is important that a copy of this letter be attached to any income tax return to which it is relevant. Alternatively, a taxpayer filing its return electronically may satisfy this requirement by attaching to the return a statement that provides the date and control number (PLR-120905-07) of this ruling letter.

Pursuant to a power of attorney on file in this matter, a copy of this letter is being sent to your authorized representative.

Sincerely,

Ken Cohen

Ken Cohen
Senior Technician Reviewer, Branch 3
Office of Associate Chief Counsel
(Corporate)